

TESTIMONY OF
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Committee on Commerce, Science, and Transportation
&
Committee on Indian Affairs
United States Senate

“ Telecommunications Issues in Indian Country ”

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INTRODUCTION

Mr. Chairman and members of the Committees, I commend you and your colleagues for convening this joint hearing to examine the critically important issue of how best to improve telecommunications service to individuals residing on tribal lands in America. I especially appreciate the opportunity to address a subject that is not only of great interest to these committees, but also a subject that is at the core of the business mission of my company, Western Wireless Corporation.

As we sit here today, more than three thousand members of the Oglala Sioux Tribe on the Pine Ridge Indian Reservation in South Dakota have telephone service, including access to emergency 911 services, in their homes for the very first time because of a unique cooperative arrangement between Western Wireless and the Oglala Sioux Tribe, which can be replicated in other areas of the country only if action is taken to eliminate barriers to universal availability of telecommunications services. In this testimony, I identify the successes and challenges associated with the current system in place to provide universal service to all Americans and what steps need to be taken to allow all individuals residing in rural America, including Native Americans, to

enjoy the benefits of access to basic and advanced telecommunications services.

BACKGROUND

Western Wireless has built a successful business providing wireless telecommunications services in rural America. The company holds cellular licenses to provide service in 19 western states, which include more than 85 Indian reservations and Native American communities. The Company is the second largest wireless carrier in the country based upon geography served with its cellular licenses covering about 25 percent of the land in the continental U.S. With a service area that has an average population density of approximately eleven people per square mile, Western Wireless serves many areas that do not have access to basic telephone service, much less advanced telecommunications services.

Western Wireless has a long history of providing service to unserved and underserved consumers. In 1994, through a unique arrangement with the Nevada Public Utilities Commission and the incumbent local exchange carrier, Western Wireless began providing wireless local loop service to small

businesses and residential consumers in a remote area of Nevada that did not have access to wireline local telephone service. In 1999, Western Wireless began offering wireless local loop service in Senator Dorgan's hometown of Regent, a community of less than 300 people, which represented one of the first competitive local telephone service offerings in rural America and made available new and innovative services to consumers. More recently, Western Wireless has introduced competitive universal service offerings in more than 140 rural communities in Minnesota, Nevada, Kansas, Texas, and the Pine Ridge Reservation in South Dakota.

INDIAN INITIATIVES: The Success

Recognizing that many American Indian people living on federal trust land (reservations) and in tribal communities lack access to basic telecommunications services, Western Wireless has undertaken several initiatives to bridge the telecommunications divide and "make available . . . to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service" as required by the Communications Act of 1934, as amended. Specifically, in August 2001,

Western Wireless entered into a historic agreement called *Tate Woglaka* (Talking Wind) with the Oglala Sioux Tribe on the Pine Ridge reservation. The purpose of Tate Woglaka agreement was to build a state-of-the-art telecommunication infrastructure necessary for economic and social development.

Western Wireless is very proud of our efforts to provide telecommunications service on tribal lands, and, most particularly, on Pine Ridge. As Senator Johnson knows so well, this is a very rural, economically depressed area lacking many of the basic necessities of life, including affordable telecommunications services. In fact, the Census Bureau identifies Shannon County consistently as the one of the poorest counties in America.

Our success on Pine Ridge can be attributed, in part, to the relationship developed between Western Wireless and the Oglala Sioux Tribe. In 1999, we responded to a devastating tornado that hit the town of Oglala on the reservation by providing emergency cellular service to emergency workers

and tribal officials. When it became apparent that there was a need for basic telephone service on the reservations, we negotiated the Tate Woglaka service agreement. The agreement was signed in late 2000, and the Indian Affairs Committee was so gracious to host the ceremonial signing of that document in December 2000.

The highlights of the agreement include:

- A sharing of rights and obligations related to operations, sales, and maintenance;
- Cooperation between the tribe and Western Wireless on customer service offerings;
- \$1 monthly rate plan for *Lifeline* eligible residents;
- An expanded local calling area that eliminates all toll charges previously associated with making certain calls on the reservation and to Rapid City;
- Access to a local Emergency Service Provider on the Reservation;
- Long distance service, prepaid services, and enhanced services;
- Access to advanced telecommunications services capabilities; and
- 24-hour customer service.

Earlier this year, Western Wireless completed the expansion of the

telecommunications network on the Oglala Sioux reservation, providing tribal members with access to wireless telephone service for the first time.

Our Oglala Sioux Pine Ridge offering speaks louder than words:

- There are approximately 4,000 total tribal households with a total tribal population of around 40,000;
- To date, Western Wireless has more than 3,500 customers on Pine Ridge, representing a significant market penetration in the short time our network has been operational on the reservation; and
- Of the 3,500 customers that we serve, approximately 75% did not have landline telephone service prior to signing up for service from Western Wireless.

Western Wireless is also working with numerous other tribes on replicating its successful service offering on the Pine Ridge reservation, but faces certain challenges that must be overcome before other tribes can enjoy the benefits of access to a competitive choice for the telecommunications needs.

INDIAN INITIATIVES: The Challenges

As difficult as it is to resolve the business issues related to providing service on reservations, the biggest challenges to bridging the telephone and digital divide on reservations are the regulatory issues, both in terms of market entry

and a level playing field.

Market Entry. Section 214(e)(2) of the Communications Act provides that state commissions shall review applications by common carriers for designation as an Eligible Telecommunications Carrier (“ETC”) for purposes of universal service support, and Section 214(e)(6) of the Act provides that the FCC shall review applications by common carriers not subject to the jurisdiction of a state commission for designation as an ETC for purposes of universal service support. For our Pine Ridge offering, Western Wireless filed an ETC application with the FCC under Section 214(e)(6) based upon the tribe’s view that our service offering on the reservation is not subject to state commission jurisdiction and that Western Wireless’ designated service area would be primarily limited to the reservation (as opposed to the entire study area of the incumbent local exchange carrier). The Oglala Sioux Tribal Council formally supported our application. The South Dakota state commission and Incumbent Local Exchange Carriers (ILECs) opposed the application on jurisdictional grounds. The state commission and the ILECs argued that the state, not the FCC, had the authority to consider Western Wireless’ application under Section 214(e)(2). At the same time, the state commission was defending in the courts and at the FCC its decision to deny

our state ETC application for non-tribal lands (the state Supreme Court and the FCC ultimately reversed the state commission's denial of ETC status to Western Wireless).

The FCC ultimately assumed jurisdiction over our Pine Ridge application and granted ETC status to Western Wireless for the reservation. Our application, however, reveals a problem that needs to be resolved: jurisdictional uncertainty, procedural wrangling, and legal maneuvering hamper the ETC application process that effectively denies service to rural consumers.

Although the FCC ultimately resolved the issues and granted ETC to Western Wireless, the tortuous application process has no doubt “chilled” competitive carriers’ interest in serving reservations.

The Goshute reservation in Nevada and Utah, and the Winnebago reservation in Nebraska, highlights some of the problems with state action on ETC applications aimed at serving Indian reservations.

The Goshute reservation is located in both Nevada and Utah.

- Early last year, the Goshute tribe declared a telecommunications emergency due to the lack of access to basic telephone service,

including emergency 911 service.

- Western Wireless applied for ETC status in rural areas of Utah and Nevada, including reservations, with the state commissions under Section 214(e)(2) – Nevada granted Western Wireless’ request and Utah denied Western Wireless’ request, resulting in the Company being an ETC in the Nevada portion of the Goshute reservation but not the Utah portion of the reservation.
- Western Wireless could have filed for ETC status under Section 214(e)(6) with the FCC, but the process would be lengthy, costly, and quite possibly litigious because of the uncertainty of whether the FCC has jurisdiction and the strong opposition from many states and ILECs.

In Nebraska, the situation is different, but the result is the same.

- The Winnebago tribe has been “held hostage” to the delays by the Nebraska Commission in approving Western Wireless’ ETC application for rural areas of the state.
 - The application has been pending since August 1998
 - After three years, the Commission granted Western Wireless ETC status, but has held up approval of what should be pro forma approval of an Advertising Plan

To create a process that simply recognizes tribal sovereignty and allows the tribes to benefit from telecommunication service offerings that meet their needs, the following steps need to be considered by Congress:

- (1) Establish Section 214(e)(6) as the clear vehicle for common carriers to file applications at the FCC for ETC status on***

reservations;

- (3) Impose a 6 month deadline for action on ETC applications; and*
- (4) Eliminate the public interest determination if the tribal government supports the grant of ETC status.*

Level Playing Field. It has been a national policy since 1934 to make available to all Americans, regardless of the location of their residence, affordable telecommunications services. In too many cases, rural areas have been effectively excluded from the benefits of a competitive telecommunications market because incumbent local telephone companies have historically monopolized access to universal service support necessary to provide affordable telecommunications services in these rural, high-cost areas. For example, the cost of providing telephone service in many rural areas exceeds \$100.00 per line per month, and yet consumers pay as little as \$10.00 or less per month, with universal service funding making up the difference. Clearly, a competitive carrier that does not have access to universal service funds would not choose to enter the local market and compete with incumbent carriers who do have access.

The FCC's pro-competitive universal service policies, adopted pursuant to the Telecommunications Act of 1996 ("1996 Act"), are beginning to have a significant impact in enabling consumers in rural and high-cost areas to realize the benefits of local competition. These benefits include more competitive pricing structures for telecommunications services, more responsive service providers spurred by competition, and more rapid deployment of new technologies and service packages. Aided by federal universal service policies that are consistent with competitive entry into local telephone markets, competitive carriers are developing new ways of providing basic telephone service, and are making progress in serving historically underserved and hard-to-reach markets.

Four years ago, Western Wireless embarked upon an effort to bring the benefits of competition to the local telephone market in rural and tribal America. The centerpiece of this effort has been the Company's petitions, pursuant to Section 214(e), for designation as an ETC for purposes of universal service support, which is necessary to provide affordable telecommunications services in many rural, high-cost areas. To date, Western Wireless has been designated as an ETC in 14 states and on the Pine Ridge

Reservation and is working with the FCC and state commissions on furthering the goals of universal service.

These inroads have not come without a high cost, however. While the ILECs were summarily designated ETCs for participation in federal universal service programs, new entrants seeking to serve high-cost and rural areas often face costly, extensive, and protracted proceedings for ETC status. In addition, in states with their own universal service support programs, it is often difficult, and sometime impossible, to gain access to funds set aside for incumbent local exchange carriers.

The 1996 Act mandates the elimination of the historical barriers to local competition in rural areas by requiring the FCC and state commissions to open the universal service market to competitive entry. It has been six years since Congress passed the Act, and many tribal and rural consumers still await the promised benefits. Simply put, many state commissions have not followed the FCC's lead in changing to a competitive universal service system, which I believe is critical to closing of the "digital divide" in tribal and rural America.

What steps can Congress take to create a level playing field for all service providers in the universal service market?

First, Congress should impose a 180-day deadline for state commission action on ETC applications. Congress has imposed a similar deadline for state commission action in interconnection arbitration proceedings. The FCC has sought comment on whether to impose a 180-day deadline for state commission action on ETC applications, but is facing strong opposition from state commissions and is unlikely to take action on this proposal.

Expeditious action on ETC designations will facilitate new service offerings on reservations, and will also have the salutary benefit of qualifying the tribal customers for the two components of the FCC's Low-Income program:

Lifeline and LinkUp. Although Lifeline and LinkUp are available to all qualifying low-income consumers, the FCC's enhanced Lifeline and LinkUp programs provide special additional discounts to qualifying subscribers living on tribal lands. The enhanced Lifeline program for qualified subscribers on

Native American Indian and Alaska Native tribal communities gives federal discounts of up to \$30.25 off monthly telephone bills. Additional discounts are sometimes available under state Lifeline programs. As a result, depending on current rates, many eligible subscribers on tribal lands are eligible to receive basic local phone service for \$1 per month. All of Western Wireless' Pine Ridge Lifeline customers receive service at \$1.00 per month, which, together with an attractive service offering, has greatly increased telephone penetration rates on the reservation. The enhanced LinkUp program for qualified subscribers on Native American Indian and Alaska Native tribal communities also offsets up to \$100 for installation costs.

Second, Congress should encourage and enable the FCC to ensure that (i) states establish competitively and technologically neutral rules and procedures for designating common carriers as ETC for purposes of state and federal universal service support, (ii) states establish explicit, portable, and competitively-neutral universal service funding mechanisms free of implicit subsidies that have the effect of entrenching the incumbent carriers in the universal service market, and (iii) funds are available to cost-effectively provide service in high-cost areas. The

Tenth Circuit Court of Appeal’s remand, in *Qwest Corp. v. FCC*, of the *Federal-State Joint Board on Universal Service, Ninth Report and Order*, presents an ideal opportunity for the FCC to re-examine universal service reform to identify “uneconomical attributes of the current system that dampen competitive opportunity,” with an eye toward remedying “shortcomings in the current system that “undermine economic competition and new entry.” Among the most vital steps in this process will be, at long last, creating “inducements” for state commissions to adopt rules and policies that work in conjunction with federal efforts to preserve and advance universal service in a competitive environment, consistent with the 1996 Act and the Tenth Circuit remand decision. The adoption of explicit rules is critical, in that new entrants should not have to resort (as has been the case to date) to piecemeal FCC oversight of individual state ETC designations and universal service programs. Such FCC proceedings are themselves costly and time-consuming, and new entrants must bear the burden of demonstrating the need to preempt state action pursuant to Section 253 of the Act.

SPECTRUM MANAGEMENT: The Key to Unlocking New Services

It should not be overlooked that as the new Internet economy moves from wired to wireless, the need for the development of a long-term spectrum allocation plan is vital if your constituents and our customers are to see the benefits of this new economy. The Congress, the FCC, the Administration, and industry must continue to work together to develop a roadmap for a comprehensive spectrum allocation policy that 1) is market driven, 2) is open to the greatest number of participants, 3) considers industry's additional spectrum requirements to provide innovative advanced services to consumers at home and abroad, and 4) encourages continued competition in the wireless industry and equal footing in international markets. In the long run, this market-based approach will be better for the U.S. economy, better for consumers, and better for American taxpayers. The wireless industry is working with congressional and Administration leaders to promote economic growth in the short-term by providing a pathway to spectrum for a high-tech growth industry that enables it to compete in the global marketplace -- recognizing at the same time that national security interests benefit from a comprehensive, spectrum management plan.

CONCLUSION

Competition holds the key to the deployment of high quality telecommunications services – regardless of where it is offered.

Government should ensure a level playing field through the establishment of a competitive universal service system, a comprehensive spectrum allocation policy, a fair and responsive competitive bidding process, reasonable tower siting policies, reasonable incentives and funding to provide advanced services in rural America, and strong enforcement action against anti-competitive behavior by incumbent carriers. In so doing, the goals of the Telecommunications Act of 1996 will be fulfilled and the “digital divide” will be eliminated.



The Western Wireless Story

Western Wireless' entry into the local telecommunications market reflects a building block approach to the provisioning of advanced telecommunications services in rural America. Today, Western Wireless provides service (*d.b.a. Cellular One*) throughout the more than 140 rural service areas and small metro areas licensed to the Company covering approximately 25% of the geography of continental United States. The Company has expanded its service offerings to include residential phone service (RPS) in rural areas by using its existing cellular network infrastructure, including switching, high-bandwidth network facilities, cell sites, and wireless local loops (WLL), to provide new and innovative local telephone services, including universal telephone service, to consumers. The expansion of its service offerings in rural areas to provide WLL and universal service enables Western Wireless to offer consumers advanced telecommunications services, including high-speed data services, using 3^d generation cellular technology.

Wireless (Cellular) Telephony Service Provider

- Rural service provider in 19 western states (**AK, AZ, CA, CO, ID, IA, KS, MN, MO, MT, NE, NV, NM, ND, OK, SD, TX, UT, WY**) (<http://www.wwireless.com>).
- State-of-the-art telecommunications infrastructure in rural areas.
- Planned deployment of 2.5 generation and 3rd generation technology capable of delivering advanced telecommunications services, including high-speed data services.

Universal Service & Wireless Local Loop Provider

- ETC status granted in 14 states (**CA, CO, IA, KS, MN, NE, NM, NV, ND, OK, SD, TX, UT, WY**) and one Indian Reservation (Pine Ridge in South Dakota).
- Serving over 140 markets in 5 states (KS, MN, NV, TX, Pine Ridge), with thousands of universal service customers.
- Industry leader in the deployment of wireless local loop service in rural America.
- Sole provider of local telephone service to the residents of many rural areas.

